

103D CONGRESS  
1ST SESSION

# S. 203

To amend the Public Health Service Act to improve the quality of long-term care insurance through the establishment of Federal standards, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 26 (legislative day, JANUARY 5), 1993

Mr. KENNEDY (for himself, Mr. HATCH, Mr. METZENBAUM, Mr. SIMON, Mr. WELLSTONE, Mr. WOFFORD, Mr. DURENBERGER, and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

To amend the Public Health Service Act to improve the quality of long-term care insurance through the establishment of Federal standards, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Long-Term Care In-  
5 surance Improvement and Accountability Act”.

1 **SEC. 2. ESTABLISHMENT OF FEDERAL STANDARDS FOR**  
 2 **LONG-TERM CARE INSURANCE.**

3 (a) IN GENERAL.—The Public Health Service Act is  
 4 amended—

5 (1) by redesignating title XXVII (42 U.S.C.  
 6 300cc et seq.) as title XXVIII; and

7 (2) by inserting after title XXVI the following  
 8 new title:

9 **“TITLE XXVII—LONG-TERM CARE**  
 10 **INSURANCE STANDARDS**

11 **“PART A—PROMULGATION OF STANDARDS AND MODEL**  
 12 **BENEFITS**

13 **“SEC. 2701. STANDARDS.**

14 **“(a) APPLICATION OF STANDARDS.—**

15 **“(1) NAIC.—**If, within 12 months after the  
 16 date of the enactment of this title, the National As-  
 17 sociation of Insurance Commissioners (hereafter in  
 18 this title referred to as the ‘NAIC’) promulgates  
 19 model standards that incorporate the requirements  
 20 of this title, such standards shall apply as provided  
 21 in this title.

22 **“(2) DEFAULT.—**If the NAIC does not promul-  
 23 gate the model standards under paragraph (1) by  
 24 the deadline established in that paragraph, the Sec-  
 25 retary shall promulgate, within 12 months after such  
 26 deadline, a regulation that provides standards that

1 incorporate the requirements of this title and such  
 2 standards shall apply as provided for in this title.

3 “(3) RELATION TO STATE LAW.—Nothing in  
 4 this title shall be construed as preventing a State  
 5 from applying standards that provide greater protec-  
 6 tion to policyholders of long-term care insurance  
 7 policies than the standards promulgated under this  
 8 title, except that such State standards may not be  
 9 inconsistent or in conflict with any of the require-  
 10 ments of this title.

11 “(b) DEADLINE FOR APPLICATION OF STAND-  
 12 ARDS.—

13 “(1) IN GENERAL.—Subject to paragraph (2),  
 14 the date specified in this subsection for a State is—

15 “(A) the date the State adopts the stand-  
 16 ards established under subsection (a)(1); or

17 “(B) the date that is 1 year after the first  
 18 day of the first regular legislative session that  
 19 begins after the date such standards are first  
 20 established under subsection (a)(2);

21 whichever is earlier.

22 “(2) STATE REQUIRING LEGISLATION.—In the  
 23 case of a State which the Secretary identifies, in  
 24 consultation with the NAIC, as—

1           “(A) requiring State legislation (other than  
2           legislation appropriating funds) in order for the  
3           standards established under subsection (a) to be  
4           applied; but

5           “(B) having a legislature which is not  
6           scheduled to meet within 1 year following the  
7           beginning of the next regular legislative session  
8           in which such legislation may be considered;  
9           the date specified in this subsection is the first day  
10          of the first calendar quarter beginning after the  
11          close of the first legislative session of the State legis-  
12          lature that begins on or after January 1, 1994. For  
13          purposes of the previous sentence, in the case of a  
14          State that has a 2-year legislative session, each year  
15          of such session shall be deemed to be a separate reg-  
16          ular session of the State legislature.

17          “(c) ITEMS INCLUDED IN STANDARDS.—The stand-  
18          ards promulgated under subsection (a) shall include—

19               “(1) minimum Federal standards for long-term  
20               care insurance consistent with the provisions of this  
21               title;

22               “(2) standards for the enhanced protection of  
23               consumers with long-term care insurance;

24               “(3) procedures for the modification of the  
25               standards established under paragraph (1) in a

1 manner consistent with future laws to expand exist-  
2 ing Federal or State long-term care benefits or es-  
3 tablish a comprehensive Federal or State long-term  
4 care benefit program; and

5 “(4) other activities determined appropriate by  
6 Congress.

7 “(d) CONSULTATION.—In establishing standards and  
8 models of benefits under this section, the Secretary shall  
9 provide for and consult with an advisory committee to be  
10 chosen by the Secretary, and composed of—

11 “(1) three individuals who are representatives  
12 of carriers;

13 “(2) three individuals who are representatives  
14 of consumer groups;

15 “(3) three representatives who are representa-  
16 tives of providers of long-term care services;

17 “(4) three other individuals who are not rep-  
18 resentatives of carriers or of providers of long-term  
19 care services and who have expertise in the delivery  
20 and financing of such services; and

21 “(5) the Secretary of Veterans Affairs.

22 “(e) DUTIES.—The advisory committee established  
23 under subsection (d) shall—

1           “(1) recommend the appropriate inflationary  
2       index to be used with respect to the inflation protec-  
3       tion benefit portion of the standards;

4           “(2) recommend the uniform needs assessment  
5       mechanism to be used in determining the eligibility  
6       of individuals for benefits under a policy;

7           “(3) recommend appropriate standards for ben-  
8       efits under section 2715(c); and

9           “(4) perform such other activities as deter-  
10      mined appropriate by the Secretary.

11       “(f) ADMINISTRATIVE PROVISIONS.—The following  
12      provisions of section 1886(e)(6) of the Social Security Act  
13      shall apply to the advisory committee chosen under sub-  
14      section (d) in the same manner as such provisions apply  
15      under such section:

16           “(1) Subparagraph (C) (relating to staffing and  
17      administration).

18           “(2) Subparagraph (D) (relating to compensa-  
19      tion of members).

20           “(3) Subparagraph (F) (relating to access to  
21      information).

22           “(4) Subparagraph (G) (relating to use of  
23      funds).

24           “(5) Subparagraph (H) (relating to periodic  
25      GAO audits).

1           “(6) Subparagraph (J) (relating to requests for  
2       appropriations).

3       “PART B—ESTABLISHMENT AND IMPLEMENTATION OF  
4       LONG-TERM CARE INSURANCE POLICY STANDARDS

5       **“SEC. 2711. IMPLEMENTATION OF POLICY STANDARDS.**

6           “(a) IN GENERAL.—

7           “(1) REGULATORY PROGRAM.—No long-term  
8       care policy (as defined in section (2721)) may be is-  
9       sued, sold, or offered for sale as a long-term care in-  
10      surance policy in a State on or after the date speci-  
11      fied in section 2701(b) unless—

12           “(A) the Secretary determines that the  
13      State has established a regulatory program  
14      that—

15           “(i) provides for the application and  
16      enforcement of the standards established  
17      under section 2701(a); and

18           “(ii) complies with the requirements  
19      of subsection (b);

20      by the date specified in section 2701(b), and  
21      the policy has been approved by the State com-  
22      missioner or superintendent of insurance under  
23      such program; or

24           “(B) if the State has not established such  
25      a program, or if the State’s regulatory program

1           has been decertified, the policy has been cer-  
2           tified by the Secretary (in accordance with such  
3           procedures as the Secretary may establish) as  
4           meeting the standards established under section  
5           2701(a) by the date specified in section  
6           2701(b).

7           For purposes of this subsection, the advertising or  
8           soliciting with respect to a policy, directly or indi-  
9           rectly, shall be deemed the offering for sale of the  
10          policy.

11          “(2) REVIEW OF STATE REGULATORY PRO-  
12          GRAMS.—The Secretary periodically shall review reg-  
13          ulatory programs described in paragraph (1)(A) to  
14          determine if they continue to provide for the applica-  
15          tion and enforcement of the standards and proce-  
16          dures established under section 2701(a) and (b). If  
17          the Secretary determines that a State regulatory  
18          program no longer meets such standards and re-  
19          quirements, before making a final determination, the  
20          Secretary shall provide the State an opportunity to  
21          adopt such a plan of correction as would permit the  
22          program to continue to meet such standards and re-  
23          quirements. If the Secretary makes a final deter-  
24          mination that the State regulatory program, after  
25          such an opportunity, fails to meet such standards



1 and requirements, the Secretary shall assume re-  
2 sponsibility under paragraph (1)(B) with respect to  
3 certifying policies in the State and shall exercise full  
4 authority under section 2701 for carriers, agents, or  
5 associations or its subsidiary in the State plans in  
6 the State.

7 “(b) ADDITIONAL REQUIREMENTS FOR APPROVAL  
8 OF STATE REGULATORY PROGRAMS.—For purposes of  
9 subsection (a)(1)(A)(ii), the requirements of this sub-  
10 section for a State regulatory program are as follows:

11 “(1) ENFORCEMENT.—The enforcement under  
12 the program—

13 “(A) shall be designed in a manner so as  
14 to secure compliance with the standards within  
15 30 days after the date of a finding of non-  
16 compliance with such standards; and

17 “(B) shall provide for notice in the annual  
18 report required under paragraph (5) to the Sec-  
19 retary of cases where such compliance is not se-  
20 cured within such 30-day period.

21 “(2) PROCESS.—The enforcement process  
22 under each State regulatory program shall provide  
23 for—

1           “(A) procedures for individuals and enti-  
2           ties to file written, signed complaints respecting  
3           alleged violations of the standards;

4           “(B) responding on a timely basis to such  
5           complaints;

6           “(C) the investigation of—

7                   “(i) those complaints which have a  
8                   reasonable probability of validity, and

9                   “(ii) such other alleged violations of  
10                  the standards as the program finds appro-  
11                  priate; and

12           “(D) the imposition of appropriate sanc-  
13           tions (which include, in appropriate cases, the  
14           imposition of a civil money penalty as provided  
15           for in section 2718) in the case of a carrier,  
16           agent, or association or its subsidiary deter-  
17           mined to have violated the standards.

18           “(3) CONSUMER ACCESS TO COMPLIANCE IN-  
19           FORMATION.—

20           “(A) IN GENERAL.—A State regulatory  
21           program must provide for consumer access to  
22           complaints filed with the State commissioner or  
23           superintendent of insurance with respect to  
24           long-term care insurance policies.

1           “(B) CONFIDENTIALITY.—The access pro-  
2           vided under subparagraph (A) shall be limited  
3           to the extent required to protect the confiden-  
4           tiality of the identity of individual policyholders.

5           “(4) PROCESS FOR APPROVAL OF PREMIUMS.—

6           “(A) IN GENERAL.—Each State regulatory  
7           program shall—

8                   “(i) provide for a process for approv-  
9                   ing or disapproving proposed premium in-  
10                  creases or decreases with respect to long-  
11                  term care insurance policies; and

12                  “(ii) establish a policy for receipt and  
13                  consideration of public comments before  
14                  approving such a premium increase or de-  
15                  crease.

16           “(B) CONDITIONS FOR APPROVAL.—No  
17           premium increase shall be approved (or deemed  
18           approved) under subparagraph (A) unless the  
19           proposed increase is accompanied by an actuar-  
20           ial memorandum which—

21                   “(i) includes a description of the as-  
22                   sumptions that justify the increase;

23                   “(ii) contains such information as  
24                   may be required under the Standards; and

25                   “(iii) is made available to the public.

1           “(C) APPLICATION.—Except as provided in  
2           subparagraph (D), this paragraph shall not  
3           apply to a group long-term care insurance pol-  
4           icy issued to a group described in section  
5           4(E)(1) of the NAIC Long Term Care Insur-  
6           ance Model Act (effective January 1991), ex-  
7           cept that such group policy shall, pursuant to  
8           guidelines developed by the NAIC, provide no-  
9           tice to policyholders and certificate holders of  
10          any premium change under such group policy.

11          “(D) EXCEPTION.—Subparagraph (C)  
12          shall not apply to—

13               “(i) group conversion policies;

14               “(ii) the group continuation feature of  
15              a group policy if the insurer separately  
16              rates employee and continuation coverages;  
17              and

18               “(iii) group policies where the func-  
19              tion of the employer is limited solely to col-  
20              lecting premiums (through payroll deduc-  
21              tions or dues checkoff) and remitting them  
22              to the insurer.

23          “(E) CONSTRUCTION.—Nothing in this  
24          paragraph shall be construed as preventing the  
25          NAIC from promulgating standards, or a State

1 from enacting and enforcing laws, with respect  
2 to premium rates or loss ratios for all, including  
3 group, long-term care insurance policies.

4 “(5) ANNUAL REPORTS.—Each State regu-  
5 latory program shall provide for annual reports to be  
6 submitted to the Secretary on the implementation  
7 and enforcement of the standards in the State, in-  
8 cluding information concerning violations in excess  
9 of 30 days.

10 “(6) ACCESS TO OTHER INFORMATION.—The  
11 State regulatory program must provide for consumer  
12 access to actuarial memoranda provided under para-  
13 graph (4).

14 “(7) DEFAULT.—In the case of a State without  
15 a regulatory program approved under subsection (a),  
16 the Secretary shall provide for the enforcement ac-  
17 tivities described in subsection (c).

18 “(c) SECRETARIAL ENFORCEMENT AUTHORITY.—

19 “(1) IN GENERAL.—The Secretary shall exer-  
20 cise authority under this section in the case of a  
21 State that does not have a regulatory program ap-  
22 proved under this section.

23 “(2) COMPLAINTS AND INVESTIGATIONS.—The  
24 Secretary shall establish procedures—

1           “(A) for individuals and entities to file  
2           written, signed complaints respecting alleged  
3           violations of the requirements of this title;

4           “(B) for responding on a timely basis to  
5           such complaints; and

6           “(C) for the investigation of—

7                   “(i) those complaints that have a rea-  
8                   sonable probability of validity; and

9                   “(ii) such other alleged violations of  
10                  the requirements of this title as the Sec-  
11                  retary determines to be appropriate.

12       In conducting investigations under this subsection,  
13       agents of the Secretary shall have reasonable access  
14       necessary to enable such agents to examine evidence  
15       of any carrier, agent, or association or its subsidiary  
16       being investigated.

17       “(3) HEARINGS.—

18           “(A) IN GENERAL.—Prior to imposing an  
19           order described in paragraph (4) against a car-  
20           rier, agent, or association or its subsidiary  
21           under this section for a violation of the require-  
22           ments of this title, the Secretary shall provide  
23           the carrier, agent, association or subsidiary  
24           with notice and, upon request made within a  
25           reasonable time (of not less than 30 days, as

1 established by the Secretary by regulation) of  
2 the date of the notice, a hearing respecting the  
3 violation.

4 “(B) CONDUCT OF HEARING.—Any hear-  
5 ing requested under subparagraph (A) shall be  
6 conducted before an administrative law judge.  
7 If no hearing is so requested, the Secretary’s  
8 imposition of the order shall constitute a final  
9 and unappealable order.

10 “(C) AUTHORITY IN HEARINGS.—In con-  
11 ducting hearings under this paragraph—

12 “(i) agents of the Secretary and ad-  
13 ministrative law judges shall have reason-  
14 able access necessary to enable such agents  
15 and judges to examine evidence of any car-  
16 rier, agent, or association or its subsidiary  
17 being investigated; and

18 “(ii) administrative law judges, may,  
19 if necessary, compel by subpoena the at-  
20 tendance of witnesses and the production  
21 of evidence at any designated place or  
22 hearing.

23 In case of contumacy or refusal to obey a sub-  
24 poena lawfully issued under this subparagraph  
25 and upon application of the Secretary, an ap-

1       appropriate district court of the United States  
2       may issue an order requiring compliance with  
3       such subpoena and any failure to obey such  
4       order may be punished by such court as a con-  
5       tempt thereof.

6               “(D) ISSUANCE OF ORDERS.—If an admin-  
7       istrative law judge determines in a hearing  
8       under this paragraph, upon the preponderance  
9       of the evidence received, that a carrier, agent,  
10      or association or its subsidiary named in the  
11      complaint has violated the requirements of this  
12      title, the administrative law judge shall state  
13      the findings of fact and issue and cause to be  
14      served on such carrier, agent, association, or  
15      subsidiary an order described in paragraph (4).

16              “(4) CEASE AND DESIST ORDER WITH CIVIL  
17      MONEY PENALTY.—

18              “(A) IN GENERAL.—Subject to the provi-  
19      sions of subparagraphs (B) through (F), an  
20      order under this paragraph—

21                      “(i) shall require the agent, associa-  
22                      tion or its subsidiary, or a carrier—

23                              “(I) to cease and desist from  
24                              such violations; and



1 “(II) to pay a civil penalty in an  
2 amount not to exceed \$15,000 in the  
3 case of each agent, and not to exceed  
4 \$25,000 for each association or its  
5 subsidiary or a carrier for each such  
6 violation; and

7 “(ii) may require the agent, associa-  
8 tion or its subsidiary, or a carrier to take  
9 such other remedial action as is appro-  
10 priate.

11 “(B) CORRECTIONS WITHIN 30 DAYS.—No  
12 order shall be imposed under this paragraph by  
13 reason of any violation if the carrier, agent, or  
14 association or its subsidiary establishes to the  
15 satisfaction of the Secretary that—

16 “(i) such violation was due to reason-  
17 able cause and was not intentional and was  
18 not due to willful neglect; and

19 “(ii) such violation is corrected within  
20 the 30-day period beginning on the earliest  
21 date the carrier, agent, association, or sub-  
22 subsidiary knew, or exercising reasonable dili-  
23 gence could have known, that such a viola-  
24 tion was occurring.

1           “(C) WAIVER BY SECRETARY.—In the case  
2 of a violation under this title that is due to rea-  
3 sonable cause and not to willful neglect, the  
4 Secretary may waive part or all of the civil  
5 money penalty imposed under subparagraph  
6 (A)(i)(II) to the extent that payment of such  
7 penalty would be grossly excessive relative to  
8 the violation involved and to the need for deter-  
9 rence of violations.

10           “(D) ADMINISTRATIVE APPELLATE RE-  
11 VIEW.—The decision and order of an adminis-  
12 trative law judge under this paragraph shall be-  
13 come the final agency decision and order of the  
14 Secretary unless, within 30 days, the Secretary  
15 modifies or vacates the decision and order, in  
16 which case the decision and order of the Sec-  
17 retary shall become a final order under this  
18 paragraph.

19           “(E) JUDICIAL REVIEW.—A carrier, agent,  
20 or association or its subsidiary or any other in-  
21 dividual adversely affected by a final order is-  
22 sued under this paragraph may, within 45 days  
23 after the date the final order is issued, file a pe-  
24 tition in the Court of Appeals for the appro-  
25 priate circuit for review of the order.

1           “(F) ENFORCEMENT OF ORDERS.—If a  
2           carrier, agent, or association or its subsidiary  
3           fails to comply with a final order issued under  
4           this paragraph against the carrier, agent, asso-  
5           ciation or subsidiary after opportunity for judi-  
6           cial review under subparagraph (E), the Sec-  
7           retary shall file a suit to seek compliance with  
8           the order in any appropriate district court of  
9           the United States. In any such suit, the validity  
10          and appropriateness of the final order shall not  
11          be subject to review.

12       “(d) DEMONSTRATION GRANT PROGRAM.—

13           “(1) IN GENERAL.—The Secretary may award  
14          grants to States for the establishment of demonstra-  
15          tion programs to improve the enforcement within  
16          such States of long-term care insurance standards  
17          applicable under this title.

18           “(2) APPLICATION.—To be eligible to receive a  
19          grant under paragraph (1), a State shall prepare  
20          and submit to the Secretary an application at such  
21          time, in such manner, and containing such informa-  
22          tion as the Secretary may require, including a de-  
23          scription of the program for which the State intends  
24          to use the amounts provided under the grant.

1           “(3) MINIMUM AMOUNT OF GRANTS.—The  
2           amount of a grant awarded under this subsection  
3           shall not be less than \$100,000.

4           “(4) EVALUATION.—A State that receives a  
5           grant under this subsection shall comply with such  
6           evaluation procedures as the Secretary shall by regu-  
7           lation establish. The Secretary shall utilize such  
8           evaluations to conduct an overall evaluation of the  
9           results of the demonstration programs established  
10          under this section.

11          “(5) AUTHORIZATION OF APPROPRIATIONS.—  
12          There are authorized to be appropriated to carry out  
13          this subsection, \$5,000,000 for each of the fiscal  
14          years 1993 through 1997.

15   **“SEC. 2712. REGULATION OF SALES PRACTICES.**

16          “(a) DUTY OF GOOD FAITH AND FAIR DEALING.—

17               “(1) IN GENERAL.—Each agent (as defined in  
18               section 2733) or association that is selling or offer-  
19               ing for sale a long-term care insurance policy has  
20               the duty of good faith and fair dealing to the pur-  
21               chaser or potential purchaser of such a policy.

22               “(2) PROHIBITED PRACTICES.—An agent or as-  
23               sociation is considered to have violated paragraph  
24               (1) if the agent or association engages in any of the  
25               following practices:

1 “(A) TWISTING.—

2 “(i) IN GENERAL.—Knowingly making  
3 any misleading representation (including  
4 the inaccurate completion of medical his-  
5 tories) or incomplete or fraudulent com-  
6 parison of any long-term care insurance  
7 policy or insurers for the purpose of induc-  
8 ing, or tending to induce, any person to re-  
9 tain or effect a change with respect to a  
10 long-term care insurance policy.

11 “(ii) POLICY REPLACEMENT FORM.—  
12 With respect to any person who elects to  
13 replace or effect a change in a long-term  
14 care insurance policy, the individual that is  
15 selling such policy shall ensure that such  
16 person completes a policy replacement  
17 form developed by the NAIC. A copy of  
18 such form shall be provided to such person  
19 and additional copies shall be delivered by  
20 the selling individual to the old policy is-  
21 suer and the new issuer and kept on file  
22 for inspection by the State regulatory  
23 agency.

24 “(B) HIGH PRESSURE TACTICS.—Employ-  
25 ing any method of marketing having the effect

1 of, or intending to, induce the purchase of long-  
2 term care insurance policy through force, fright,  
3 threat or undue pressure, whether explicit or  
4 implicit.

5 “(C) COLD LEAD ADVERTISING.—Making  
6 use directly or indirectly of any method of mar-  
7 keting which fails to disclose in a conspicuous  
8 manner that a purpose of the method of mar-  
9 keting is solicitation of insurance and that con-  
10 tact will be made by an insurance agent or in-  
11 surance company.

12 “(D) OTHERS.—Engaging in such other  
13 practices determined inappropriate under guide-  
14 lines issued by the NAIC.

15 “(b) FINANCIAL STANDARDS.—The NAIC shall de-  
16 velop recommended financial minimum standards (includ-  
17 ing both income and asset criteria) for the purpose of ad-  
18 vising individuals considering the purchase of a long-term  
19 care insurance policy.

20 “(c) PROHIBITION OF SALE OR ISSUANCE TO MEDIC-  
21 AID BENEFICIARIES.—An agent, an association, or a car-  
22 rier may not knowingly sell or issue a long-term care in-  
23 surance policy to an individual who is eligible for medical  
24 assistance under title XIX of the Social Security Act.

1       “(d) PROHIBITION OF SALE OR ISSUANCE OF DUPLI-  
 2 CATE SERVICE BENEFIT POLICIES.—An agent, associa-  
 3 tion or its subsidiary, or a carrier may not sell or issue  
 4 a service-benefit long-term care insurance policy to an in-  
 5 dividual—

6           “(1) knowing that the policy provides for cov-  
 7 erage that duplicates coverage already provided in  
 8 another service-benefit long-term care insurance pol-  
 9 icy held by such individual (unless the policy is in-  
 10 tended to replace such other policy); or

11          “(2) for the benefit of an individual unless the  
 12 individual (or a representative of the individual) pro-  
 13 vides a written statement to the effect that the cov-  
 14 erage—

15           “(A) does not duplicate other coverage in  
 16 effect under a service-benefit long-term care in-  
 17 surance policy; or

18           “(B) will replace another service-benefit  
 19 long-term care insurance policy.

20 In this subsection, the term ‘service-benefit long-term care  
 21 insurance policy’ means a long-term care insurance policy  
 22 which provides for benefits based on the type and amount  
 23 of services furnished.

24       “(e) PROHIBITION BASED ON ELIGIBILITY FOR  
 25 OTHER BENEFITS.—A carrier may not sell or issue a

1 long-term care insurance policy that reduces, limits or co-  
2 ordinates the benefits provided under the policy on the  
3 basis that the policyholder has or is eligible for other long-  
4 term care insurance coverage or benefits.

5 “(f) PROVISION OF OUTLINE OF COVERAGE.—No  
6 agent, association or its subsidiary, or carrier may sell or  
7 offer for a sale a long-term care insurance policy without  
8 providing to the purchaser or potential purchaser (or rep-  
9 resentative) an outline of coverage that complies with the  
10 standards established under section 2701(a).

11 “(g) PENALTIES.—Any agent who sells, offers for  
12 sale, or issues a long-term care insurance policy in viola-  
13 tion of this section may be imprisoned not more than 5  
14 years, or fined in accordance with title 18, United States  
15 Code, and, in addition, is subject to a civil money penalty  
16 of not to exceed \$15,000 for each such violation. Any asso-  
17 ciation or its subsidiary or carrier that sells, offers for  
18 sale, or issues a long-term care insurance policy in viola-  
19 tion of this section may be fined in accordance with title  
20 18, United States Code, and in addition, is subject to a  
21 civil money penalty of not to exceed \$25,000 for each vio-  
22 lation.

23 “(h) AGENT TRAINING AND CERTIFICATION RE-  
24 QUIREMENTS.—The NAIC, shall establish requirements



1 for long-term care insurance agent training and certifi-  
2 cation that—

3 “(1) specify requirements for training insurance  
4 agents who desire to sell or offer for sale long-term  
5 care insurance policies; and

6 “(2) specify procedures for certifying agents  
7 who have completed such training and who are as  
8 qualified to sell or offer for sale long-term care in-  
9 surance policies.

10 **“SEC. 2713. ADDITIONAL RESPONSIBILITIES FOR CAR-**  
11 **RIERS.**

12 “(a) REFUND OF PREMIUMS.—If an application for  
13 a long-term care insurance policy (or for a certificate  
14 under a group long-term care insurance policy) is denied  
15 or an applicant returns a policy or certificate within 30  
16 days of the date of its issuance pursuant to subsection  
17 2717, the carrier shall refund directly to the applicant,  
18 or in the case of an employer to whomever remits the pre-  
19 mium, and not by delivery by the agent, not later than  
20 30 days after the date of the denial or return, any pre-  
21 miums paid with respect to such a policy (or certificate).

22 “(b) MAILING OF POLICY.—If an application for a  
23 long-term care insurance policy (or for a certificate under  
24 a group long-term care insurance policy) is approved, the  
25 carrier shall provide the applicant, or in the case of a

1 group plan the employer, the policy (or certificate) of in-  
2 surance not later than 30 days after the date of the ap-  
3 proval.

4 “(c) INFORMATION ON DENIALS OF CLAIMS.—If a  
5 claim under a long-term care insurance policy is denied,  
6 the carrier shall, within 30 days of the date of a written  
7 request by the policyholder or certificate holder (or rep-  
8 resentative)—

9 “(1) provide a written explanation of the rea-  
10 sons for the denial; and

11 “(2) make available all medical and patient  
12 records directly relating to such denial.

13 Except as provided in subsection (e) of section 2715, no  
14 claim under such a policy may be denied on the basis of  
15 a failure to disclose a condition at the time of issuance  
16 of the policy if the application for the policy failed to re-  
17 quest information respecting the condition.

18 “(d) REPORTING OF INFORMATION.—A carrier that  
19 issues one or more long-term care insurance policies shall  
20 periodically (not less often than annually) report, in a  
21 form and in a manner determined by the NAIC, to the  
22 Commissioner, superintendent or director of insurance of  
23 each State in which the policy is delivered, and shall make  
24 available to the Secretary, upon request, information in  
25 a form and manner determined by the NAIC concerning—

1           “(1) the long-term care insurance policies of the  
2           carrier that are in force;

3           “(2) the most recent premiums for such policies  
4           and the premiums imposed for such policies since  
5           their initial issuance;

6           “(3) the lapse rate, replacement rate, and re-  
7           scission rates by policy;

8           “(4) the names of that 10 percent of its agents  
9           that—

10           “(A) have the greatest lapse and replace-  
11           ment rate; and

12           “(B) have produced at least \$50,000 of  
13           long-term care insurance sales in the previous  
14           year; and

15           “(5) the claims denied (expressed as a number  
16           and as a percentage of claims submitted) by policy.

17 Information required under this subsection shall be re-  
18 ported in a format specified in the standards established  
19 under section 2701(a). For purposes of paragraph (3),  
20 there shall be included (but reported separately) data con-  
21 cerning lapses due to the death of the policyholder. For  
22 purposes of paragraph (4), there shall not be included as  
23 a claim any claim that is denied solely because of the fail-  
24 ure to meet a deductible, waiting period, or exclusionary  
25 period.

1       “(e) STANDARDS ON COMPENSATION FOR SALE OF  
2 POLICIES.—

3           “(1) IN GENERAL.—A carrier that issues one or  
4 more long-term care insurance policies may provide  
5 a commission or other compensation to an agent or  
6 other representative for the sale of such a policy only  
7 if the first year commission or other first year com-  
8 pensation to be paid does not exceed 200 percent of  
9 the commission or other compensation paid for sell-  
10 ing or servicing the policy in the second year, or if  
11 the first year commission or other compensation to  
12 be paid does not exceed 50 percent of the premium  
13 paid on the first year policy, until the NAIC promul-  
14 gates mandatory standards concerning compensation  
15 for the sale of such policies.

16           “(2) SUBSEQUENT YEARS.—The commission or  
17 other compensation provided for the sale of long-  
18 term care insurance policies in years subsequent to  
19 the first year of the policy shall be the same as that  
20 provided in the second subsequent year and shall be  
21 provided for no fewer than 5 subsequent years.

22           “(3) LIMITATION.—No carrier shall provide  
23 compensation to its agents for the sale of a long-  
24 term care insurance policy and no agent shall receive  
25 compensation greater than the renewal compensation

1 payable by the replacing carrier on renewal policies  
 2 if an existing policy is replaced.

3 “(4) COMPENSATION DEFINED.—As used in  
 4 this subsection, the term ‘compensation’ includes pe-  
 5 cuniary or nonpecuniary remuneration of any kind  
 6 relating to the sale or renewal of the policy, includ-  
 7 ing but not limited to deferred compensation, bo-  
 8 nuses, gifts, prizes, awards, and finders fees.

9 **“SEC. 2714. RENEWABILITY STANDARDS FOR ISSUANCE,**  
 10 **AND BASIC FOR CANCELLATION OF POLI-**  
 11 **CIES.**

12 “(a) IN GENERAL.—No long-term care insurance pol-  
 13 icy may be canceled or nonrenewed for any reason other  
 14 than nonpayment of premium, material misrepresentation  
 15 or fraud.

16 “(b) CONTINUATION AND CONVERSION RIGHTS FOR  
 17 GROUP POLICIES.—

18 “(1) IN GENERAL.—Each group long-term care  
 19 insurance policy shall provide covered individuals  
 20 with a basis for continuation or conversion in ac-  
 21 cordance with this subsection.

22 “(2) BASIS FOR CONTINUATION.—For purposes  
 23 of paragraph (1), a policy provides a basis for con-  
 24 tinuation of coverage if the policy maintains cov-  
 25 erage under the existing group policy when such cov-

1       erage would otherwise terminate and which is sub-  
 2       ject only to the continued timely payment of pre-  
 3       mium when due. A group policy which restricts pro-  
 4       vision of benefits and services to or contains incen-  
 5       tives to use certain providers or facility, may provide  
 6       continuation benefits which are substantially equiva-  
 7       lent to the benefits of the existing group policy.

8               “(3) BASIS FOR CONVERSION.—For purposes of  
 9       paragraph (1), a policy provides a basis for conver-  
 10      sion of coverage if the policy entitles each individ-  
 11      ual—

12               “(A) whose coverage under the group pol-  
 13      icy would otherwise be terminated for any rea-  
 14      son; and

15               “(B) who has been continuously insured  
 16      under the policy (or group policy which was re-  
 17      placed) for at least 6 months before the date of  
 18      the termination;

19      to issuance of a policy providing benefits identical to,  
 20      substantially equivalent to, or in excess of, those of  
 21      the policy being terminated, without evidence of in-  
 22      surability.

23               “(4) TREATMENT OF SUBSTANTIAL EQUIVA-  
 24      LENCE.—In determining under this subsection  
 25      whether benefits are substantially equivalent, consid-

1       eration should be given to the difference between  
2       managed care and non-managed care plans.

3           “(5) GROUP REPLACEMENT OF POLICIES.—If a  
4       group long-term care insurance policy is replaced by  
5       another long-term care insurance policy purchased  
6       by the same policyholder, the succeeding issuer shall  
7       offer coverage to all persons covered under the old  
8       group policy on its date of termination. Coverage  
9       under the new group policy shall not result in any  
10      exclusion for preexisting conditions that would have  
11      been covered under the group policy being replaced.

12      “(c) STANDARDS FOR ISSUANCE.—

13           “(1) IN GENERAL.—

14           “(A) GUARANTEE.—An agent, association  
15      or carrier that sells or issues long-term care in-  
16      surance policies shall guarantee that such poli-  
17      cies shall be sold or issued to an individual, or  
18      eligible individual in the case of a group plan,  
19      if such individual meets the minimum medical  
20      underwriting requirements of such policy.

21           “(B) PREMIUM FOR CONVERTED POL-  
22      ICY.—If a group policy from which conversion  
23      is made is a replacement for a previous group  
24      policy, the premium for the converted policy  
25      shall be calculated on the basis of the insured’s

1 age at the inception of coverage under the  
2 group policy from which conversion is made.  
3 Where the group policy from which conversion  
4 is made replaced previous group coverage, the  
5 premium for the converted policy shall be cal-  
6 culated on the basis of the insured's age at in-  
7 ception of coverage under the group policy re-  
8 placed.

9 “(2) UPGRADE FOR CURRENT POLICIES.—The  
10 NAIC shall establish standards, including those pro-  
11 viding guidance on medical underwriting and age  
12 rating, with respect to the access of individuals to  
13 policies offering upgraded benefits.

14 “(d) EFFECT OF INCAPACITATION.—

15 “(1) IN GENERAL.—

16 “(A) PROHIBITION.—Except as provided  
17 in paragraph (2), a long-term care insurance  
18 policy in effect as of the effective date of the  
19 standards established under section 2701(a)  
20 may not be canceled for nonpayment if the pol-  
21 icy holder is determined by a long-term care  
22 provider, physician or other health care pro-  
23 vider, independent of the issuer of the policy, to  
24 be cognitively or mentally incapacitated so as to  
25 not make payments in a timely manner.



1           “(B) REINSTATEMENT.—A long-term care  
 2           policy shall include a provision that provides for  
 3           the reinstatement of such coverage, in the event  
 4           of lapse, if the insurer is provided with proof of  
 5           cognitive or mental incapacitation. Such rein-  
 6           statement option shall remain available for a  
 7           period of not less than 5 months after termi-  
 8           nation and shall allow for the collection of past  
 9           due premium.

10          “(2) PERMITTED CANCELLATION.—A long-term  
 11          care insurance policy may be canceled under para-  
 12          graph (1) for nonpayment if—

13               “(A) the period of such nonpayment is in  
 14               excess of 30 days; and

15               “(B) notice of intent to cancel is provided  
 16               to the policyholder or designated representative  
 17               of the policy holder not less than 30 days prior  
 18               to such cancellation, except that notice may not  
 19               be provided until the expiration of 30 days after  
 20               a premium is due and unpaid.

21          Notice under this paragraph shall be deemed to have  
 22          been given as of 5 days after the mailing date.

23   **“SEC. 2715. BENEFIT STANDARDS.**

24          “(a) USE OF STANDARD DEFINITIONS AND TERMI-  
 25          NOLOGY, UNIFORM FORMAT, AND STANDARD BENE-

1 FITS.—Each long-term care insurance policy shall, with  
 2 respect to services, providers or facilities, pursuant to  
 3 standards established under section 2701(a)—

4 “(1) use uniform language and definitions, ex-  
 5 cept that such language and definitions may take  
 6 into account the differences between States with re-  
 7 spect to definitions and terminology used for long-  
 8 term care services and providers;

9 “(2) use a uniform format for presenting the  
 10 outline of coverage under such a policy; and

11 “(3) provide coverage for at least one standard  
 12 benefits package that shall include the limitations on  
 13 the amount of payments per day and the lengths of  
 14 covered stays for nursing facility and home health  
 15 care services;

16 as prescribed under guidelines issued by the NAIC and  
 17 periodically updated.

18 “(b) DISCLOSURE.—

19 “(1) OUTLINE OF COVERAGE.—

20 “(A) REQUIREMENT.—Each carrier that  
 21 sells or offers for sale a long-term care insur-  
 22 ance policy shall provide an outline of coverage  
 23 under such policy that meets the applicable  
 24 standards established pursuant to section  
 25 2701(a), complies with the requirements of sub-

1 paragraph (B), and is in a uniform format as  
2 prescribed in guidelines issued by the NAIC  
3 and periodically updated.

4 “(B) CONTENTS.—The outline of coverage  
5 for each long-term care insurance policy shall  
6 include at least the following:

7 “(i) A description of the principal  
8 benefits and coverage under the policy.

9 “(ii) A statement of the principal ex-  
10 clusions, reductions, and limitations con-  
11 tained in the policy.

12 “(iii) A statement of the terms under  
13 which the policy (or certificate) may be  
14 continued in force or discontinued, the  
15 terms for continuation or conversion, and  
16 any reservation in the policy of a right to  
17 change premiums.

18 “(iv) A statement, in bold face type  
19 on the face of the document in language  
20 that is understandable to an average indi-  
21 vidual, that the outline of coverage is a  
22 summary only, not a contract of insurance,  
23 and that the policy (or master policy) con-  
24 tains the contractual provisions that gov-  
25 ern, except that such summary shall sub-

1           stantially and accurately reflect the con-  
2           tents of the policy or the master policy.

3           “(v) A description of the terms, speci-  
4           fied in section 2717, under which a policy  
5           or certificate may be returned and pre-  
6           mium refunded.

7           “(vi) Information on national average  
8           costs for nursing facility and home health  
9           care and information (in graphic form) on  
10          the relationship of the value of the benefits  
11          provided under the policy to such national  
12          average costs and State average costs,  
13          where available.

14          “(vii) A statement of the percentage  
15          limit on annual premium increases that is  
16          provided under the policy pursuant to this  
17          section.

18          “(2) CERTIFICATES.—A certificate issued pur-  
19          suant to a group long-term care insurance policy  
20          shall include—

21                  “(A) a description of the principal benefits  
22                  and coverage provided in the policy;

23                  “(B) a statement of the principal exclu-  
24                  sions, reductions, and limitations contained in  
25                  the policy; and

1           “(C) a statement that the group master  
2           policy determines governing contractual provi-  
3           sions.

4           “(3) LONG-TERM CARE AS PART OF LIFE IN-  
5           SURANCE.—In the case of a long-term care insur-  
6           ance policy issued as a part of, or a rider on, a life  
7           insurance policy, at the time of policy delivery there  
8           shall be provided a policy summary that includes—

9           “(A) an explanation of how the long-term  
10          care benefits interact with other components of  
11          the policy (including deductions from death  
12          benefits);

13          “(B) an illustration of the amount of bene-  
14          fits, the length of benefit, and the guaranteed  
15          lifetime benefits (if any) for each covered per-  
16          son; and

17          “(C) any exclusions, reductions, and limi-  
18          tations on benefits of long-term care.

19          “(4) ADDITIONAL INFORMATION.—The NAIC  
20          shall develop recommendations with respect to in-  
21          forming consumers of the long-term economic viabil-  
22          ity of carriers issuing long-term care insurance poli-  
23          cies.

24          “(c) LIMITING CONDITIONS ON BENEFITS; MINIMUM  
25          BENEFITS.—

1           “(1) IN GENERAL.—A long-term care insurance  
2 policy may not condition or limit eligibility—

3           “(A) for benefits for a type of services to  
4 the need for or receipt of any other services;

5           “(B) for any benefit on the medical neces-  
6 sity for such benefit;

7           “(C) for benefits furnished by licensed or  
8 certified providers in compliance with conditions  
9 which are in addition to those required for li-  
10 censure or certification under State law, except  
11 that if no State licensure or certification laws  
12 exists, in compliance with qualifications devel-  
13 oped by the NAIC; or

14           “(D) for residential care (if covered under  
15 the policy) only—

16           “(i) to care provided in facilities  
17 which provide a higher level of care; or

18           “(ii) to care provided in facilities  
19 which provide for 24-hour or other nursing  
20 care not required in order to be licensed by  
21 the State.

22           “(2) HOME HEALTH CARE OR COMMUNITY-  
23 BASED SERVICES.—If a long-term care insurance  
24 policy provides benefits for the payment of specified

1 home health care or community-based services, the  
2 policy—

3 “(A) may not limit such benefits to serv-  
4 ices provided by registered nurses or licensed  
5 practical nurses;

6 “(B) may not require benefits for such  
7 services to be provided by a nurse or therapist  
8 that can be provided by a home health aide or  
9 licensed or certified home care worker, except  
10 that if no State licensure or certification laws  
11 exists, in compliance with qualifications devel-  
12 oped by the NAIC;

13 “(C) may not limit such benefits to serv-  
14 ices provided by agencies or providers certified  
15 under title XVIII of the Social Security Act;  
16 and

17 “(D) must provide, at a minimum, benefits  
18 for personal care services (including home  
19 health aide and home care worker services as  
20 defined by the NAIC) home health services,  
21 adult day care, and respite care in an individ-  
22 ual’s home or in another setting in the commu-  
23 nity, or any of these benefits on a respite care  
24 basis.

1           “(3) NURSING FACILITY SERVICES.—If a long-  
2       term care insurance policy provides benefits for the  
3       payment of specified nursing facility services, the  
4       policy must provide such benefits with respect to all  
5       nursing facilities (as defined in section 1919(a) of  
6       the Social Security Act or until such time as subse-  
7       quently provided for by the NAIC in establishing  
8       uniform language and definitions under section  
9       2715(a)(1)) in the State.

10          “(4) PER DIEM POLICIES.—

11               “(A) DEFINITION.—For purposes of this  
12       title, the term ‘per diem long-term care insur-  
13       ance policy’ means a long-term care insurance  
14       policy (or certificate under a group long-term  
15       care insurance policy) that provides for benefit  
16       payments on a periodic basis due to cognitive  
17       impairment or loss of functional capacity with-  
18       out regard to the expenses incurred or services  
19       rendered during the period to which the pay-  
20       ments relate.

21               “(B) LIMITATION.—No per diem long-term  
22       care insurance policy (or certificate) may condi-  
23       tion, limit or otherwise exclude benefit pay-  
24       ments based on the receipt of any type services



1 from any type providers of long-term care serv-  
2 ice providers.

3 “(d) PROHIBITION OF DISCRIMINATION.—A long-  
4 term care insurance policy may not treat benefits under  
5 the policy in the case of an individual with Alzheimer’s  
6 disease, with any related progressive degenerative demen-  
7 tia of an organic origin, with any organic or inorganic  
8 mental illness, or with mental retardation or any other  
9 cognitive or mental impairment differently from an indi-  
10 vidual having another medical condition for which benefits  
11 may be made available.

12 “(e) LIMITATION ON USE OF PREEXISTING CONDI-  
13 TION LIMITS.—

14 “(1) INITIAL ISSUANCE.—

15 “(A) IN GENERAL.—Subject to subpara-  
16 graph (B), a long-term care insurance policy  
17 may not exclude or condition benefits based on  
18 a medical condition for which the policyholder  
19 received treatment or was otherwise diagnosed  
20 before the issuance of the policy.

21 “(B) 6-MONTH LIMIT.—

22 “(i) IN GENERAL.—No long-term care  
23 insurance policy or certificate issued under  
24 this title shall utilize a definition of ‘pre-  
25 existing condition’ that is more restrictive

1           than the following: The term ‘preexisting  
2           condition’ means a condition for which  
3           medical advice or treatment was rec-  
4           ommended by, or received from a provider  
5           of health care services, within 6 months  
6           preceding the effective date of coverage of  
7           an insured individual.

8           “(ii) PROHIBITION ON EXCLUSION OF  
9           COVERAGE.—No long-term care insurance  
10          policy or certificate may exclude coverage  
11          for a loss or confinement that is the result  
12          of a preexisting condition unless such loss  
13          or confinement begins within 6 months fol-  
14          lowing the effective date of the coverage of  
15          the insured individual.

16          “(2) REPLACEMENT POLICIES.—If a long-term  
17          care insurance policy replaces another long-term  
18          care insurance policy, the issuer of the replacing pol-  
19          icy shall waive any time periods applicable to pre-  
20          existing conditions, waiting period, elimination peri-  
21          ods and probationary periods in the new policy for  
22          similar benefits to the extent such time was spent  
23          under the original policy.

24          “(f) ELIGIBILITY FOR BENEFITS.—

1           “(1) LONG-TERM CARE POLICIES.—Each long-  
2 term care insurance policy shall—

3           “(A) describe the level of benefits available  
4 under the policy; and

5           “(B) specify in clear, understandable  
6 terms, the level (or levels) of physical, cognitive,  
7 or mental impairment required in order to re-  
8 ceive benefits under the policy.

9           “(2) FUNCTIONAL ASSESSMENT.—In order to  
10 submit a claim under any long-term care insurance  
11 policy, each claimant shall have a professional func-  
12 tional assessment of his or her physical, cognitive,  
13 and mental abilities. Such initial assessment shall be  
14 conducted by an individual or entity, meeting the  
15 qualifications established by the NAIC to assure the  
16 professional competence and credibility of such indi-  
17 vidual or entity and that such individual meets any  
18 applicable State licensure and certification require-  
19 ments. The individual or entity conducting such as-  
20 sessment may not control, or be controlled by, the  
21 issuer of the policy. For purposes of this paragraph  
22 and paragraph (4), the term ‘control’ means the di-  
23 rect or indirect possession of the power to direct the  
24 management and policies of a person. Control is pre-  
25 sumed to exist, if any person directly or indirectly,

1 owns, controls, holds with the power to vote, or  
2 holds proxies representing 10 percent of the voting  
3 securities of another person.

4 “(3) CLAIMS REVIEW.—Except as provided in  
5 paragraph (1), each long-term care insurance policy  
6 shall be subject to final claims review by the carrier  
7 pursuant to the terms of the long-term care insur-  
8 ance policy.

9 “(4) APPEALS PROCESS.—

10 “(A) IN GENERAL.—Each long-term care  
11 insurance policy shall provide for a timely and  
12 independent appeals process, meeting standards  
13 established by the NAIC, for individuals who  
14 dispute the results of the claims review, con-  
15 ducted under paragraph (3), of the policy-  
16 holder’s functional assessment, conducted under  
17 paragraph (2).

18 “(B) INDEPENDENT ASSESSMENT.—An  
19 appeals process under this paragraph shall in-  
20 clude, at the request of the claimant, an inde-  
21 pendent assessment of the claimant’s physical,  
22 cognitive or mental abilities.

23 “(C) CONDUCT.—An independent assess-  
24 ment under subparagraph (B) shall be con-  
25 ducted by an individual or entity meeting the

1 qualifications established by the NAIC to as-  
2 sure the professional competence and credibility  
3 of such individual or entity and any applicable  
4 State licensure and certification requirements  
5 and may not be conducted—

6 “(i) by an individual who has a direct  
7 or indirect significant or controlling inter-  
8 est in, or direct affiliation or relationship  
9 with, the issuer of the policy;

10 “(ii) by an entity that provides serv-  
11 ices to the policyholder or certificateholder  
12 for which benefits are available under the  
13 long-term care insurance policy; or

14 “(iii) by an individual or entity in con-  
15 trol of, or controlled by, the issuer of the  
16 policy.

17 “(5) STANDARD ASSESSMENTS.—Not later than  
18 2 years after the date of enactment of this title, the  
19 advisory committee established under section  
20 2701(d) shall recommend uniform needs assessment  
21 mechanisms for the determination of eligibility for  
22 benefits under such assessments.

23 “(g) INFLATION PROTECTION.—

24 “(1) OPTION TO PURCHASE.—A carrier may  
25 not offer a long-term care insurance policy unless

1 the carrier also offers to the proposed policyholder,  
2 including each group policyholder, the option to pur-  
3 chase a policy that provides for increases in benefit  
4 levels, with benefit maximums or reasonable dura-  
5 tions that are meaningful, to account for reasonably  
6 anticipated increases in the costs of long-term care  
7 services covered by the policy. A carrier may not  
8 offer to a policyholder an inflation protection feature  
9 that is less favorable to the policyholder than one  
10 following:

11 “(A) With respect to policies that provide  
12 for automatic periodic increases in benefits, the  
13 policy provides for an annual increase in bene-  
14 fits in a manner so that such increases are  
15 computed annually at a rate of not less than 5  
16 percent.

17 “(B) With respect to policies that provide  
18 for periodic opportunities to elect an increase in  
19 benefits, the policy guarantees that the insured  
20 individual will have the right to periodically in-  
21 crease the benefit levels under the policy with-  
22 out providing evidence of insurability or health  
23 status so long as the option for the previous pe-  
24 riod was not declined. The amount of any such

1 additional benefit may not be less than the dif-  
2 ference between—

3 “(i) the existing policy benefit; and

4 “(ii) such existing benefit compounded  
5 annually at a rate of at least 5 percent for  
6 the period beginning on the date on which  
7 the existing benefit is purchased and ex-  
8 tending until the year in which the offer of  
9 increase is made.

10 “(C) With respect to service benefit poli-  
11 cies, the policy covers a specified percentage of  
12 the actual or reasonable charges and does not  
13 include a maximum specified indemnity amount  
14 or limit.

15 “(2) EXCEPTION.—The requirements of para-  
16 graph (1) shall not apply to life insurance policies or  
17 riders containing accelerated long-term care benefits.

18 “(3) REQUIRED INFORMATION.—Carriers shall  
19 include the following information in or together with  
20 the outline of coverage provided under this title:

21 “(A) A graphic comparison of the benefit  
22 levels of a policy that increases benefits over the  
23 policy period with a policy that does not in-  
24 crease benefits. Such comparison shall show

1 benefit levels over not less than a 20-year pe-  
2 riod.

3 “(B) Any expected premium increases or  
4 additional premiums required to pay for any  
5 automatic or optional benefit increases, whether  
6 the individual who purchases the policy obtains  
7 the inflation protection initially or whether such  
8 individual delays purchasing such protection  
9 until a future time.

10 “(4) CONTINUATION OF PROTECTION.—Infla-  
11 tion protection benefit increases under this sub-  
12 section under a policy that contains such protection  
13 shall continue without regard to an insured’s age,  
14 claim status or claim history, or the length of time  
15 the individual has been insured under the policy.

16 “(5) CONSTANT PREMIUM.—An offer of infla-  
17 tion protection under this subsection that provides  
18 for automatic benefit increases shall include an offer  
19 of a premium that the carrier expects to remain con-  
20 stant. Such offer shall disclose in a conspicuous  
21 manner that the premium may change in the future  
22 unless the premium is guaranteed to remain con-  
23 stant.

24 “(6) REJECTION.—Inflation protection under  
25 this subsection shall be included in a long-term care



1 insurance policy unless a carrier obtains a written  
2 rejection of such protection signed by the policy-  
3 holder.

4 **“SEC. 2716. NONFORFEITURE.**

5 “(a) IN GENERAL.—Each long-term care insurance  
6 policy (or certificate) shall provide that if the policy lapses  
7 after the policy has been in effect for a minimum period  
8 (specified under the standards under section 2701(a)), the  
9 policy will provide, without payment of any additional pre-  
10 miums, nonforfeiture benefits as determined appropriate  
11 by the NAIC.

12 “(b) ESTABLISHMENT OF STANDARDS.—The stand-  
13 ards under section 2701(a) shall provide that the percent-  
14 age or amount of benefits under subsection (a) must in-  
15 crease based upon the policyholder’s equity in the policy.

16 **“SEC. 2717. LIMIT OF PERIOD OF CONTESTABILITY AND**  
17 **RIGHT TO RETURN.**

18 “(a) CONTESTABILITY.—A carrier may not cancel or  
19 renew a long-term care insurance policy or deny a claim  
20 under the policy based on fraud or intentional misrepre-  
21 sentation relating to the issuance of the policy unless no-  
22 tice of such fraud or misrepresentation is provided within  
23 a time period to be determined by the NAIC.

24 “(b) RIGHT TO RETURN.—Each applicant for a long-  
25 term care insurance policy shall have the right to return

1 the policy (or certificates) within 30 days of the date of  
2 its delivery (and to have the premium refunded) if, after  
3 examination of the policy or certificate, the applicant is  
4 not satisfied for any reason.

5 **“SEC. 2718. CIVIL MONEY PENALTY.**

6 “(a) CARRIER.—Any carrier, association or its sub-  
7 sidiary that sells or offers for sale a long-term care insur-  
8 ance policy and that—

9 “(1) fails to make a refund in accordance with  
10 section 2713(a);

11 “(2) fails to transmit a policy in accordance  
12 with section 2713(b);

13 “(3) fails to provide, make available, or report  
14 information in accordance with subsections (c) or (d)  
15 of section 2713;

16 “(4) provides a commission or compensation in  
17 violation of section 2713(e);

18 “(5) fails to provide an outline of coverage in  
19 violation of section 2715(b)(1); or

20 “(6) issues a policy without obtaining certain  
21 information in violation of section 2715(f);

22 is subject to a civil money penalty of not to exceed \$25,000  
23 for each such violation.

24 “(b) AGENTS.—Any agent that sells or offers for sale  
25 a long-term care insurance policy and that—

1 “(1) fails to make a refund in accordance with  
2 section 2713(a);

3 “(2) fails to transmit a policy in accordance  
4 with section 2713(b);

5 “(3) fails to provide, make available, or report  
6 information in accordance with subsections (c) or (d)  
7 of section 2713;

8 “(4) fails to provide an outline of coverage in  
9 violation of section 2715(b)(1); or

10 “(5) issues a policy without obtaining certain  
11 information in violation of section 2715(f);

12 is subject to a civil money penalty of not to exceed \$15,000  
13 for each such violation.

14 “PART C—LONG-TERM CARE INSURANCE POLICIES,  
15 DEFINITION AND ENDORSEMENTS

16 “**SEC. 2721. LONG-TERM CARE INSURANCE POLICY DE-**  
17 **FINED.**

18 “(a) IN GENERAL.—As used in this section, the term  
19 ‘long-term care insurance policy’ means any insurance pol-  
20 icy, rider or certificate advertised, marketed, offered or de-  
21 signed to provide coverage for not less than 12 consecutive  
22 months for each covered person on an expense incurred,  
23 indemnity prepaid or other basis, for one or more nec-  
24 essary diagnostic, preventive, therapeutic, rehabilitative,  
25 maintenance or personal care services, provided in a set-

1   ting other than an acute care unit of a hospital. Such term  
2   includes—

3           “(1) group and individual annuities and life in-  
4           surance policies, riders or certificates that provide  
5           directly, or that supplement long-term care insur-  
6           ance; and

7           “(2) a policy, rider or certificates that provides  
8           for payment of benefits based on cognitive impair-  
9           ment or the loss of functional capacity.

10          “(b) ISSUANCE.—Long-term care insurance policies  
11   may be issued by—

12           “(1) carriers;

13           “(2) fraternal benefit societies;

14           “(3) nonprofit health, hospital, and medical  
15   service corporations;

16           “(4) prepaid health plans;

17           “(5) health maintenance organizations; or

18           “(6) any similar organization to the extent they  
19   are otherwise authorized to issue life or health insur-  
20   ance.

21          “(c) POLICIES EXCLUDED.—The term ‘long-term  
22   care insurance policy’ shall not include any insurance pol-  
23   icy, rider or certificate that is offered primarily to provide  
24   basic Medicare supplement coverage, basic hospital ex-  
25   pense coverage, basic medical-surgical expense coverage,

1 hospital confinement indemnity coverage, major medical  
2 expense coverage, disability income or related asset-protec-  
3 tion coverage, accident only coverage, specified disease or  
4 specified accident coverage, or limited benefit health cov-  
5 erage. With respect to life insurance, such term shall not  
6 include life insurance policies, riders or certificates that  
7 accelerate the death benefit specifically for one or more  
8 of the qualifying events of terminal illness, medical condi-  
9 tions requiring extraordinary medical intervention, or per-  
10 manent institutional confinement, and that provide the op-  
11 tion of a lump-sum payment for those benefits and in  
12 which neither the benefits nor the eligibility for the bene-  
13 fits is conditioned upon the receipt of long-term care.

14 “(d) APPLICATIONS.—Notwithstanding any other  
15 provision of this title, this title shall apply to any product  
16 advertised, marketed or offered as a long-term insurance  
17 policy, rider or certificate.

18 **“SEC. 2722. CODE OF CONDUCT WITH RESPECT TO EN-**  
19 **DORSEMENTS.**

20 “Not later than 1 year after the date of enactment  
21 of this title the NAIC shall issue guidelines that shall  
22 apply to organizations and associations, other than em-  
23 ployers and labor organizations that do not accept com-  
24 pensation, and their subsidiaries that provide endorse-  
25 ments of long-term care insurance policies, or that permit

1 such policies to be offered for sale through the organiza-  
2 tion or association. Such guidelines shall include at mini-  
3 mum the following:

4           “(1) In endorsing or selling long-term care in-  
5 surance policies, the primary responsibility of an or-  
6 ganization or association shall be to educate their  
7 members concerning such policies and assist such  
8 members in making informed decisions. Such organi-  
9 zations and associations may not function primarily  
10 as sales agents for insurance companies.

11           “(2) Organizations and associations shall pro-  
12 vide objective information regarding long-term care  
13 insurance policies sold or endorsed by such organiza-  
14 tions and associations to ensure that members of  
15 such organizations and associations have a balanced  
16 and complete understanding of both the strengths  
17 and weaknesses of the policies that are being en-  
18 dored or sold.

19           “(3) Organizations and associations selling or  
20 endorsing long-term care insurance policies shall dis-  
21 close in marketing literature provided to their mem-  
22 bers concerning such policies the manner in which  
23 such policies and the insurance company issuing  
24 such policies were selected. If the organization or as-  
25 sociation and the insurance company have interlock-

1       ing directorates, the organization or association shall  
2       disclose such fact to their members.

3           “(4) Organizations and associations selling or  
4       endorsing long-term care insurance policies shall dis-  
5       close in marketing literature provided to their mem-  
6       bers concerning such policies the nature and amount  
7       of the compensation arrangements (including all  
8       fees, commissions, administrative fees and other  
9       forms of financial support that the organization or  
10      association receives) from the endorsement or sale of  
11      the policy to its members.

12          “(5) The Boards of Directors of organizations  
13      and associations selling or endorsing long-term care  
14      insurance policies, if such organizations and associa-  
15      tions have a Board of Directors, shall review and ap-  
16      prove such insurance policies, the compensation ar-  
17      rangements and the marketing materials used to  
18      promote sales of such policies.

19          “PART D—MISCELLANEOUS PROVISIONS

20      **“SEC. 2731. FUNDING FOR LONG-TERM CARE INSURANCE**  
21                   **INFORMATION, COUNSELING, AND ASSIST-**  
22                   **ANCE.**

23          “(a) IN GENERAL.—The Secretary, acting through  
24      the Public Health Service, may award grants to States,  
25      and national organizations with demonstrated experience

1 in long-term care insurance, for the establishment of pro-  
 2 grams to provide information, counseling, and assistance  
 3 relating to the procurement of adequate and appropriate  
 4 long-term care insurance.

5 “(b) APPLICATION.—To be eligible to receive a grant  
 6 under subsection (a), a State or national organization  
 7 shall prepare and submit to the Secretary an application  
 8 at such time, in such manner, and containing such infor-  
 9 mation as the Secretary may require, including a descrip-  
 10 tion of the program for which the State or organization  
 11 intends to use the amounts provided under the grant.

12 “(c) AUTHORIZATION OF APPROPRIATIONS.—

13 “(1) IN GENERAL.—There are authorized to be  
 14 appropriate for grants to States under subsection  
 15 (a), \$10,000,000 for each of the fiscal years 1994  
 16 through 1996.

17 “(2) NATIONAL ORGANIZATIONS.—There are  
 18 authorized to be appropriate for grants to national  
 19 organizations under subsection (a), \$1,000,000 for  
 20 each of the fiscal years 1994 through 1996.

21 **“SEC. 2732. DEFINITIONS.**

22 “As used in this title:

23 “(1) AGENT.—The term ‘agent’ means—

24 “(A) prior to 2 years after the date of en-  
 25 actment of this Act, an individual who sells or



1 offers for sale a long-term care insurance policy  
2 subject to the requirements of this title and is  
3 licensed or required to be licensed under State  
4 law for such purpose; and

5 “(B) after the date referred to in subpara-  
6 graph (A), an individual who meets the training  
7 and certification requirements established under  
8 section 2712(f).

9 “(2) ASSOCIATION.—The term ‘association’ in-  
10 cludes the association and its subsidiaries.

11 “(3) CARRIER.—The term ‘carrier’ means any  
12 person that offers a health benefit plan, whether  
13 through insurance or otherwise, including a licensed  
14 insurance company, a prepaid hospital or medical  
15 service plan, a health maintenance organization, a  
16 self-insured carrier, a reinsurance carrier, and a  
17 multiple employer welfare arrangement (a combina-  
18 tion of employers associated for the purpose of pro-  
19 viding health benefit plan coverage for their employ-  
20 ees).”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Sections 2701 through 2714 of the Public  
23 Health Service Act (42 U.S.C. 300cc through  
24 300cc–15) are redesignated as sections 2801  
25 through 2814, respectively.

1           (2)(A) Sections 465(f) and 497 of such Act (42  
2       U.S.C. 286(f) and 289(f)) are amended by striking  
3       out “2701” each place that such appears and insert-  
4       ing in lieu thereof “2801”.

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S 203 IS——3

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